



FILED

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Santa Rosa for
Approval to Construct a Public Pedestrian
and Bicycle At-Grade Crossing of the
Sonoma-Marin Area Rail Transit
("SMART") Track at Jennings Avenue
Located in Santa Rosa, Sonoma County,
State of California.

A1505014

REPLY TO COMMENTS ON PROPOSED DECISION

15 August 2016

James L. Duncan
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Approval to Construct a Public Pedestrian and
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Application No. 15-05-014

REPLY TO COMMENTS ON PROPOSED DECISION

Pursuant to Rules 14.3(d) and 1.15, James L. Duncan (Duncan) a party in this proceeding, A1505014, respectfully submits the following Reply Comments on Proposed Decision.

Throughout this proceeding, Duncan has consistently urged the California Public Utilities Commission (CPUC) to act within the scope of its limited, ministerial, jurisdiction over safety appliances and procedures, pursuant to Public Utilities Code § 99152,¹ to approve the Application of the City of Santa Rosa (City) to improve the historic 112-year-old at-grade rail crossing at Jennings Avenue (Jennings crossing). (See Duncan's Response, at p. 11.)

During the Evidentiary Hearing, March 14, 2016, in this proceeding, Patrick S. Berdge, attorney for the Safety and Enforcement Division (SED), stipulated that the City's Application for the Jennings crossing meets all of the legal requirements for an at-grade pedestrian bicycle crossing.²

ALJ MC KINNEY: Okay. So you've stipulated that it meets all of the?

MR BERDGE: Legal requirements for an at-grade pedestrian bicycle crossing.

ALJ MC KINNEY: Okay. Thank you.

¹ All following Code citations are to the Public Utilities Code unless indicated otherwise.

² Transcript, Evidentiary Hearing, March 14, 2016, page 92, lines 4-8.

Consistent with this stipulation by SED, the Proposed Decision finds that the safety appliances and procedures proposed for the Jennings crossing meet all applicable legal standards; therefore, that part of the Proposed Decision is consistent with the limited, ministerial, jurisdiction granted to the CPUC by § 99152. (See Proposed Decision, section 4.3, pp. 20-21.) Accordingly, the City's Jennings crossing application should now be approved.

For the reasons set forth above, James L. Duncan respectfully urges the Commission to approve the City of Santa Rosa's Application, A1505014, and to revise the Proposed Decision to acknowledge the limits to the Commission's jurisdiction in transit districts such as SMART, consistent with *Santa Clara Valley Transportation Authority v Public Utilities Commission of the State of California* 124 Cal. App. 4th 346 (2004), other authorities cited, and argument submitted by James L. Duncan.

Dated this 15th day of August, 2016, at Santa Rosa, California.

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By /s/ James L. Duncan
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